REMARKS

The present application stands with pending claims 1-4, 6-23 and 25-28, where only claims 1 and 28 are independent.

Claims 1, 3, 4, 6-8, 11-13, 16, 21-23, 25-28 stand rejected under 35 U.S.C. §103 as being obvious to LeVander (U.S. 6,216,108) in view of Conway (U.S. 5,732,401) and Dossett (Industrial Engineering Journal "Work Measured Labor Standards – The state of the art."). In response, Applicants traverse because no motivation exists to modify LeVander to add the features disclosed in Conway and Dossett to derive all of the features recited in claims 1 and 28.

Background

The present invention is directed to estimating the time it takes to perform tasks in the healthcare field such as medical operations, physical examination's by a doctor, etc. Without close analysis, it appears that a doctor or nurse is not limited to any specific physical motions when administering medical treatment. Thus, many different ways of examining a patient or performing the same operation exists. For instance, for a general practice MD, the individual motions and parts of each examination will change depending on the medical problem of the patient as well as the physical positioning of the patient during the exam. The doctor is not required to perform tasks in an examination in any particular order. Even administering the same treatment, such as giving shots, will vary depending on the dimension, physical condition and positioning of the patient for the shot. A nurse typically is not substantially limited to a set of physical motions or positioning for the location of the shot.

A method of task time analysis called Maynard Operation Sequence Technique (MOST) was used as early as 1974. This method of timing tasks included breaking down and listing all of

the separate physical motions required to perform a task, timing each motion separately, and then adding all of the times of the motions required for each task. This method was thought only to be applicable to manufacturing and factory jobs where the same short task is performed with very high repetition. Thus, it applies when a person is doing the same exact thing over and over again, such as in the construction field (e.g., hammering) or factory jobs.

This method has not been applied to the medical field for about 25 years until the present applicants decided to see if it would work despite the weight of the assumptions that it would not. Breaking down the healthcare tasks into small physical motions, then timing those motions and totaling them up to find the time of a healthcare tasks renders surprisingly successful results.

To capture the invention, both claims 1 and 28 recite the following method step:

> said human operator using an operator independent method of task time measurement based on independently timing each motion in a procession of motions required to perform said healthcare task without timing from a beginning of said healthcare task to an end of said healthcare task a human performing said healthcare task;

In contrast to the present invention, the Examiner cites LeVander which merely discloses the use of historical standards for estimating time and costs for tasks in the construction/building repair industries. It does not disclose healthcare, and it does not disclose breaking down and timing tasks by their individual motions as recited in claims 1 and 28. The Examiner appears to understand this and states that (from Office Action, p. 3):

> Conway ('401) discloses activity based cost tracking in a healthcare environment. see figures 8A-C and column 12, line 43 – column 14, line 48 for the benefit of efficiently determining the actual cost of procedures and determining the particular efficiency of a particular caregiver.
>
> Dossett teaches, see page 2, lines 5-25, common techniques to develop standard times, and further teaches 6 types of motion analysis, of which one is Maynard Operation Sequence Technique, specifically applicable to short cycle, highly repetitive tasks.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the motion analysis technique or one of the others in a healthcare environment for the benefit of efficiently determining the actual cost of procedures and determining the particular efficiency of a particular caregiver.

No Motivation Exists to Combine the Cited References Because the Cited References Teach Away from the Claimed Features

No motivation exists to modify LeVander with either of these references. "It is improper to combine references where the references teach away from their combination." MPEP 2145 X.D.2 (*citing In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)).

The Examiner adds Conway to add "healthcare" to LeVander. However, "A prior art reference must be considered in its entirety, i.e. as a whole, including portions that would lead away from the claimed invention." MPEP 2141.02 (*citing W.L.Gore & Assoc., Inc. v. Garlock, Inc.* 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983)).

Conway actually teaches that in order to time a healthcare task, one should time when a medical person enters or leaves a room, rather than time the individual tasks or motions in the room, when it is known what particular task (or medical operation) is being performed in that room i.e. only the duration of an entire known operation or procedure is timed (Col. 2, lines 33-45). This teaches directly against the present invention which claims the timing of individual motions as Applicants have already argued in Amendment C. Furthermore, this inherently emphasizes exactly what applicants have been asserting: that it was thought to be too difficult to time the exact motions of medical procedures. This **strongly** supports the notion that the applicants acted against accepted wisdom to develop their invention. "The totality of the prior art must be considered, and proceeding contrary to accepted wisdom in the art is evidence of nonobviousness." MPEP 2145 X..D.3. (*citing In re Hedges*, 783 F.2d 1038, 228 USPQ 685 (Fed.

Cir. 1986)). Thus, the Examiner cannot ignore this teaching when modifying LeVander. To remove this teaching from Conway to simply obtain the conclusion that healthcare tasks can be timed for efficiency is to practically ignore the entire disclosure of Conway. This is clearly against the patent laws and regulations.

Regarding Dossett, the Examiner uses Dossett to add the MOST timing system mentioned above and cites Dossett for disclosing that MOST should be used for short cycle, highly repetitive tasks. See Page 2, lines 8-25; page 3, line 14. No where in the references is it taught that healthcare tasks have short cycle, high repetitivity. The Examiner is improperly using hindsight to come up with this conclusion when in fact the accepted wisdom in the industry is exactly the opposite. Thus, Dossett actually teaches away from using MOST for healthcare based on accepted wisdom in the industry, especially when that wisdom is implied by the Examiner's own reference: Conway.

For these reasons, that neither Conway nor Dossett nor both can be combined with LeVander to derive the presently claimed invention, Applicants submit that the §103 rejection of claim 1 and 28, and their depending claims 3, 4, 6-8, 11-13, 16, 21-23, and 25-27 based on LeVander in view of Dossett and Conway has been overcome, and respectfully request that the §103 rejection of these claims be withdrawn.

No Motivation Exists to Combine the Cited References Because None of the Cited References Disclose the Desirability of the Combination

"The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." MPEP 2143.01 (*citing In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). The motivation must be found in "the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons skilled in the art." MPEP 2143.01 (*citing in re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998)).

Each of the three references cited by the Examiner discloses a different method of timing tasks as mentioned above: (1) LeVander times entire tasks and uses traditional historical data, (2) Conway discloses timing of room entry and exit – presumably because it is too difficult to time the healthcare tasks performed in the room, and (3) Dossett discloses MOST for use of short cycle, highly repetitive tasks. The Examiner does not provide a detailed or specific motivation for combining the references other than stating it is obvious to combine the references "for the benefit of efficiently determining the actual cost of procedures and determining the particular efficiency of a particular caregiver." Office Action, page 3, 9th full paragraph.

This is a vague, general motivation that can apply to any task timing method and offers no specific reason for combining the references. All task timing methods are used for improving "efficiency" in estimating costs; that is the entire purpose of these methods.

In addition, LeVander does not itself explicitly or inherently disclose any "problem" that can be solved by the other two cited references. Nor do the other two references clearly disclose an improvement of LeVander. As already discussed above, Conway discloses that if healthcare tasks are involved, a different timing method should be used than that disclosed by LeVander.

Dossett simply discloses a different task time method to be used instead of the teaching in LeVander. Thus, these three references are merely alternatives to each other and do not disclose or suggest that they actually complement each other in any way. Therefore, no reason exists in any of these references that disclose or suggest the desirability to combine the three references to derive the present invention. The Examiner **MUST** reveal a specific motivation from the references to combine them and has not done so yet. For these additional reasons, Applicants submit that the §103 rejection of claims 1 and 28, and their depending claims 3, 4, 6-8, 11-13, 16, 21-23, and 25-27, based on LeVander in view of Dossett and Conway has been overcome, and respectfully request that the §103 rejection of these claims be withdrawn.

Claims 2 and 14 stand rejected under 35 U.S.C. §103 as being obvious to LeVander (U.S. 6,216,108) in view of Conway (U.S. 5,732,401) and Dossett and Isherwood (U.S. 5,918,219). Claims 15, 17-20 stand rejected under 35 U.S.C. §103 as being obvious to LeVander (U.S. 6,216,108) in view of Conway (U.S. 5,732,401) and Dossett and Dangat et al. (U.S. 5,971,585). Claims 9-10 stand rejected under 35 U.S.C. §103 as being obvious to LeVander (U.S. 6,216,108) in view of Conway (U.S. 5,732,401) and Dossett and Nick (U.S. 6,009406).

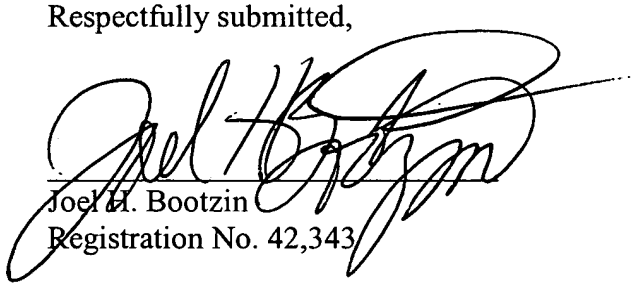
In response to all of these rejections, these claims all depend directly or indirectly from claims 1 or 28, and therefore include all of the features from claims 1 or 28 plus other features. Thus, Applicants repeat the arguments from above that LeVander, Conway and Dossett nor the other cited references: Isherwood, Dangat and Nick, alone or in combination, disclose or suggest timing motions of healthcare tasks to determine the duration of the healthcare task as recited in claims 1 and 28. For these reasons, Applicants submit that the §103 rejection of claims 2, 9, 10, 14, 15, and 17-20 based on LeVander in view of Dossett and Conway and the other cited

references has been overcome, and respectfully request that the §103 rejection of these claims be withdrawn.

For the foregoing reasons, Applicants respectfully request consideration and allowance of all pending claims. The Examiner is invited to contact the undersigned attorney if an interview would expedite prosecution.

No fee is thought to be due in conjunction with the submission of this Amendment. However, the Director is hereby authorized to charge any deficiency to Deposit Account No. 18-2284 of Piper Rudnick, duplicate copy attached.

Respectfully submitted,



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